

1                   UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF TEXAS  
3                   HOUSTON DIVISION

4                   UNITED STATES OF AMERICA     .     Criminal Action  
5   .     No. 10-512  
6                   Plaintiff,                         .  
7   .  
8                   VS.                                 .  
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10                   TRANSCRIPT OF PROCEEDINGS  
11                   BEFORE THE HONORABLE VANESSA D. GILMORE  
12                   UNITED STATES DISTRICT JUDGE

13                  APPEARANCES:

14  
15                  FOR THE UNITED STATES:     MR. CRAIG FEAZEL  
16   United States Attorney's Office  
17   P.O. Box 61129  
18   Houston, Texas 77208

19                  FOR DEFENDANT MORRIS:     MR. KELLY W. CASE  
20   Case Law, PLLC  
21   2203 Timberloch Place  
22   Suite 100  
23   The Woodlands, Texas 77380

24  
25                  Proceedings recorded by mechanical stenography, transcript  
                        produced by computer-aided transcription.

1 APPEARANCES (Continued):

2

3 OFFICIAL COURT REPORTER: MS. STEPHANIE KAY CARLISLE  
4 U.S. District Court  
5 515 Rusk, Suite 8016  
6 Houston, Texas 77002  
7 713.250.5157

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1                   P R O C E E D I N G S

2                   (May 9, 2011)

3                   THE COURT: United States versus Thor Morris.

4                   For the United States?

5                   MR. FEAZEL: Craig Feazel for the United States.

6                   THE COURT: Say it again, please.

7                   MR. FEAZEL: Craig Feazel, Your Honor.

8                   MR. CASE: Kelly Case for the defendant. He is  
9 here.

09:40:21AM 10                   THE COURT: And for Thor Morris?

11                   MR. CASE: Kelly Case.

12                   THE COURT: All right. We are here this morning for  
13 sentencing.

14                   Mr. Feazel, has the United States seen the  
09:40:42AM 15 Presentence Investigation Report, the addendum and the second  
16 addendum to the Presentence Investigation Report?

17                   MR. FEAZEL: We have, Your Honor. We have no  
18 objections.

19                   THE COURT: All right. Mr. Case, have you and your  
09:40:53AM 20 client had a chance to review the Presentence Investigation  
21 Report, the addendum, and the second addendum to the  
22 Presentence Investigation Report?

23                   MR. CASE: Yes, Your Honor, we have; and we have  
24 filed objections.

09:41:01AM 25                   THE COURT: Right. Then the Presentence

09:41:14AM

1 Investigation Report and the addendums will be placed into the  
2 record under seal. In the event that there is any appeal of  
3 this case, the only portion that will not be disclosed will be  
4 that portion that contains a sentencing recommendation from  
5 the probation department to the Court.

6 There are no objections by the United States.

7 The defendant has filed some objections.

09:41:35AM

8 First, the defendant objects to the loss amount reflected in  
9 Paragraph 27 of the report, indicating that the con -- the  
10 monitored conversations, those with the undercover agents,  
11 involve some puffing.

09:41:57AM

12 The only difference, I guess I would see,  
13 between the earlier conversations between just Morris and  
14 Martin and the later conversations that ended up being with  
15 the undercover officer, Leo, is somehow or another the number  
16 of ATM machines got increased based on some statement that Leo  
17 made to 35 machines as opposed to the original 32 that Morris  
18 and Martin had mapped out before they got the undercover  
19 officers involved. And that was the only big distinction that  
20 I saw between the earlier conversations and the later  
21 conversations.

09:42:22AM

22 So, to the extent that the defendant objects to  
23 those later monitored conversations involving some additional  
24 puffing -- and the number did seem to change with those  
25 conversations -- I think that that probably is a valid

1 objection. But with respect to the overall loss amount, it  
2 doesn't change the loss amount by that much.

3                   Mr. Case, I mean, 32 machines that he and  
4 Martin had talked about versus the number the that the FBI  
09:42:59AM 5 agent threw out, it amounts to a difference of 256,000 versus  
6 280,000, which still puts us in the 12-level loss amount of  
7 more than 200 but less than 400.

8                   Did you have something else more -- besides  
9 that issue in terms of dealing with the undercover officers  
09:43:20AM 10 that you thought was relevant to the loss amount issue?

11                  MR. CASE: The -- yes, Your Honor.

12                  THE COURT: Yes, sir.

13                  MR. CASE: To make it simple, I didn't see a basis  
14 in fact for the numbers that were produced; in other words,  
09:43:33AM 15 the --

16                  THE COURT: \$400 gift card thing and --

17                  MR. CASE: No, ma'am. The number of ATM machines  
18 that were available. It was -- this conversation -- that part  
19 of the conversation initiated from initially Martin and then,  
09:43:47AM 20 once Mr. Morris arrived in Houston, from Leo the case agent.

21                  THE COURT: It increased a little bit more.

22                  MR. CASE: It did increase, but what my concern is  
23 basically about is there's nothing to show that there were  
24 actually this many machines in Houston. I'm having trouble  
09:44:05AM 25 with a 12-level increase based on something that is so

09:44:23AM

1 speculative that it's -- it is not anywhere in the record  
2 other than statements made by, first of all, which should have  
3 been a co-conspirator and, second of all, by a law enforcement  
4 undercover. The problem I have is we don't know that that's a  
real intended loss. And I understand --

6 THE COURT: It was his intent, though, at the time  
7 he came.

8 MR. CASE: I understand. I'm fully aware of that.

09:44:32AM

9 THE COURT: You're saying you are not sure that it  
10 was possible but it was -- it was his hope that it was  
probable, and that's where the intent comes from.

12 MR. CASE: Yes, Your Honor.

09:44:46AM

13 THE COURT: Well, the objection is sustained in  
14 part. The Court finds that the intended loss amount should  
15 have reflected \$256,000 in Paragraph 27 based on the number of  
machines that the defendant was discussing with Martin before  
17 the undercover agents got involved as opposed to the 35 that  
18 he discussed with Leo, the fake co-conspirator, the undercover  
19 agent. But that does not change the offense characteristic.  
20 It still remains at a Level 12. And the Court finds that that  
21 was this defendant's intended loss at the time that he began  
22 the second series of conversations with the undercover agent.

09:45:15AM

23 The defendant next objects to the two-point  
24 increase based on the use of a computer system because the ATM  
09:45:40AM 25 machine was a free-standing machine. I don't think that's

1 really a valid objection, Mr. Case. It doesn't have to -- I  
2 mean, obviously the ATM machine still had to be connected to  
3 the bank's infrastructure in order for it to be able to  
4 function. But I think this particular comment covers this  
09:46:05AM 5 particular type of computerized device, the ATM machine, as  
6 well. So --

7 MR. CASE: My objection was basically that he would  
8 have no way to maintain or op -- excuse me -- maintain or  
9 operate the critical infrastructure of the bank through the  
09:46:23AM 10 ATM machine. I understand the Court's logic.

11 THE COURT: Okay. All right. The objection is  
12 overruled.

13 Were there any other factual inaccuracies in  
14 the report that could have an impact on sentencing?

09:46:36AM 15 Mr. Case, did you see anything?

16 MR. CASE: No, Your Honor.

17 THE COURT: Mr. Feazel, did you see anything?

18 MR. FEAZEL: No, Your Honor.

19 THE COURT: All right. Other than the small change  
09:46:39AM 20 that the Court made to Paragraph 27, the Court adopts the  
21 Presentence Investigation Report and the addendums; finds that  
22 the statutory range of punishment is not more than five years;  
23 supervised release not more than three years, fine not more  
24 than 250,000, special assessment \$100.

09:46:57AM 25 Under the sentencing guidelines, based on a

1 total offense level of 21, any criminal history category of I  
2 provides for a guideline range of 37 to 46 months, supervised  
3 release term of two to three years, a fine range of 7500 to  
4 75,000, a special assessment of \$100.

09:47:16AM 5                   Mr. Case, would you like to say anything on  
6 behalf of your client, please?

7                   MR. CASE: My client has family members present.

8                   If you would stand up.

9                   THE COURT: Is that his mom?

09:47:26AM 10                  MR. CASE: His mother and father.

11                  THE COURT: Oh, okay.

12                  MR. CASE: They are divorced, but they are both here  
13 to support.

14                  THE COURT: Oh, okay.

09:47:31AM 15                  MR. CASE: I also have letters.

16                  THE COURT: Did I get those already?

17                  MR. CASE: I believe that you didn't include them in  
18 the PSI, but I did see them in the --

19                  THE COURT: I did not see them. May I see them?

09:47:42AM 20 Were they --

21                  MR. CASE: I e-mailed them to the case agent after  
22 the --

23                  THE COURT: Oh, to the case agent.

24                  MR. CASE: No. I'm sorry. To the probation officer  
25 before.

1 THE COURT: Oh, okay.

2 Okay. Anything else you would like to say on  
3 behalf of the defendant?

4 MR. CASE: As noted in the Government's no  
09:48:12AM 5 objection, Your Honor, they are recommending departure --  
6 excuse me -- a two-level decrease for -- excuse me -- for  
7 acceptance of responsibility.

8 THE COURT: Right. That --

9 MR. CASE: I think you included that, but --

09:48:27AM 10 THE COURT: Say it again, please. I'm sorry. Oh.

11 MR. FEAZEL: Judge, I believe that's already taken  
12 into account.

13 THE COURT: Yes, it was taken care of. It is not  
14 reflected in the PSR, but in the addendum it was reflected.  
09:48:37AM 15 And so, that's how we got from a 24 to a 21. Right. It was  
16 in the addendum. I think it didn't get included because  
17 originally we didn't have the statement of acceptance. And  
18 then the statement for acceptance was included in the original  
19 addendum, and that changed the offense level down to a 21 from  
09:48:56AM 20 a 24.

21 MR. CASE: That's correct.

22 THE COURT: Right. Okay.

23 Anything else?

24 MR. CASE: No, Your Honor. That's all.

09:49:05AM 25 THE COURT: All right. Mr. Morris, what would you

1 like to say on your own behalf?

2 THE DEFENDANT: I'm sorry, Your Honor. I messed up.

3 I had a lot going for me, and I made one bad decision. I let  
4 down my family, my friends, and everybody I knew. I'm sorry.

09:49:34AM 5 THE COURT: Take your time. It is important that  
6 you speak up for yourself.

7 MR. CASE: Yes.

8 THE DEFENDANT: I'm ashamed of what I did. If I had  
9 to do it all over again, there's no way.

09:49:58AM 10 THE COURT: What about all this other conversation  
11 about -- and your lawyer may grab you by the arm and tell you  
12 not to talk to me, but I'm going to give it a stab anyway.

13 Well, maybe I ought to leave it alone.

14 Mr. Case is giving me the evil eye -- not really. But was all  
09:50:25AM 15 this other conversation with Martin, was that all puffing,  
16 too, or what?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Did you do any of that stuff?

19 THE DEFENDANT: No, Your Honor. This is the first  
09:50:36AM 20 time I've been in trouble with the law.

21 THE COURT: It may seem like financial fraud isn't  
22 hurting anybody, but it does hurt people.

23 THE DEFENDANT: I understand that.

24 THE COURT: Just because it's some big corporate  
09:51:06AM 25 entity or banking institution doesn't mean that it is not a

1 real loss. It is a loss when a bank has its money taken from  
2 them because it ends up being passed on to all of us  
3 customers, everybody, you know, just people generally to have  
4 to deal with the theft and crime that is committed against  
09:51:25AM 5 banks. It is reflected in higher rates and for services and  
6 more service charges and all kinds of other things. And it  
7 does translate into a real loss when they have to sort of  
8 absorb loss as a result of thefts.

9 So, it is not a victimless crime. It may seem  
09:51:44AM 10 like it just because you are just taking money from some big  
11 corporation or from some banking institution, but it really  
12 does make a difference when people steal from them. It is no  
13 different than holding somebody up with a gun. It's the same  
14 thing, but you are just doing it with a computer just because  
09:52:01AM 15 you managed to find the book with the codes that they stupidly  
16 put online so that people could go in and figure out how to  
17 steal their money. It still makes a difference.

18 Do you understand?

19 THE DEFENDANT: Yes, Your Honor.

09:52:13AM 20 THE COURT: And holding all these people's credit  
21 card numbers on your computer, 50,000 credit card numbers, I  
22 mean, come on now.

23 THE DEFENDANT: Your Honor --

24 THE COURT: Pardon me? I didn't hear you.

09:52:32AM 25 THE DEFENDANT: I'm sorry. Your Honor, that file

1 was in a bunch of files that I downloaded over two years ago  
2 now. I didn't collect those card numbers. I didn't do  
3 anything with that, Your Honor.

4 THE COURT: Okay.

09:52:46AM 5 THE DEFENDANT: I thought I had deleted that over  
6 two years ago.

7 THE COURT: You are saying you didn't even know that  
8 they were still on your computer?

9 THE DEFENDANT: No, Your Honor.

09:52:55AM 10 THE COURT: All those credit card numbers of other  
11 people?

12 THE DEFENDANT: I --

13 THE COURT: Pardon me?

14 THE DEFENDANT: It was in a file, and I had gotten  
09:53:05AM 15 rid of my files for them --

16 THE COURT: So, people, like, share people's credit  
17 card numbers and stuff?

18 THE DEFENDANT: It was just in a bunch of files that  
19 I had downloaded in a folder. I thought I had deleted it.

09:53:30AM 20 THE COURT: Okay. Anything else from the United  
21 States?

22 MR. FEAZEL: Nothing, Your Honor. We just feel that  
23 somewhere within the guidelines is appropriate.

24 THE COURT: All right. The Court will state the  
09:54:32AM 25 sentence at this time. The lawyers will have a final

1 opportunity to make any objections before the sentence is  
2 imposed.

3 It is the judgment of this Court that the  
4 defendant, Thor Alexander Morris, is hereby committed to the  
09:55:14AM 5 custody of the Bureau of Prisons to be imprisoned for  
6 37 months.

7 The defendant is before this Court for  
8 sentencing having pled guilty to fraud and related activity in  
9 connection with a computer. The FBI opened an investigation  
09:55:26AM 10 following a complainant report that the defendant planned to  
11 gain unauthorized access to several ATM machines. The Court  
12 has held the defendant responsible for an intent to  
13 authorize -- to access 32 ATM machines in attempting to obtain  
14 \$8,000 from each of those machines.

09:56:00AM 15 Based on those findings, the Court has found  
16 that the defendant's intended criminal conduct could have  
17 yielded \$256,000 in cash withdrawn by defrauding the ATM  
18 machines in Houston, Texas.

19 The defendant has no prior criminal history.  
09:56:20AM 20 The defendant has been assessed additional offense points for  
21 the use of the -- a computerized access device. The Court  
22 denied the defendant's objection to the loss amount but takes  
23 that objection into consideration in determining where within  
24 the applicable guideline the defendant should be sentenced and  
09:56:53AM 25 for that reason has chosen to sentence the defendant at the

1 low end of the applicable guideline. The Court believes that  
2 that sentence is sufficient to satisfy the sentencing  
3 objectives and the factors enumerated in 18 USC Section  
4 3553(a).

09:57:14AM 5                   Upon release from imprisonment, the defendant  
6 shall be placed on supervised release for a term of  
7 three years. A three-year term of supervised release will  
8 allow the probation department the maximum amount of time to  
9 assist the defendant as he reintegrates back into society and  
09:57:32AM 10 to oversee his compliance with his conditions of supervised  
11 release.

12                   Within 72 hours of release from the custody of  
13 the Bureau of Prisons, the defendant shall report in person to  
14 the probation office in the district to which the defendant is  
09:57:47AM 15 released.

16                   While on supervised release, the defendant  
17 shall not commit another federal, state, or local crime; shall  
18 comply with the standard conditions that have been adopted by  
19 this Court and any mandatory conditions required by law,  
09:57:59AM 20 including the following additional conditions:

21                   The defendant shall not possess a firearm,  
22 ammunition, dangerous device, or any other dangerous weapon.  
23 The defendant is required to provide the -- to cooperate in  
24 the collection of a DNA sample if such is authorized.

09:58:25AM 25                   It is further ordered that the defendant shall

1 pay to the United States a special assessment of \$100 due and  
2 payable immediately. The Court finds that the defendant does  
3 not have the ability to pay a fine within the guideline range,  
4 and the Court waives the imposition of a fine in this case.

09:58:43AM 5                   Mr. Feazel, do you know of any reason why the  
6 sentence should not be imposed as stated?

7                   MR. FEAZEL: No, Your Honor.

8                   THE COURT: Mr. Case, do you know of any reason why  
9 the sentence should not be imposed as stated?

09:58:54AM 10                  MR. CASE: No, Your Honor.

11                  THE COURT: Then the sentence is imposed as stated.

12                  Mr. Morris, you can appeal your conviction if  
13 you believe that your guilty plea was somehow unlawful or  
14 involuntary or if you think that there was some other  
09:59:07AM 15 fundamental defect in the proceedings that was not waived by  
16 you. With few exceptions, any notice of appeal must be filed  
17 within 15 days of the date the judgment is entered in this  
18 case. If you are without funds to hire an attorney to  
19 represent you, you can apply to the Court for in forma  
09:59:21AM 20 pauperis status; and counsel will be appointed for you.

21                  Do you understand me, sir?

22                  THE DEFENDANT: Yes, Your Honor.

23                  THE COURT: All right. Anything else from the  
24 United States?

09:59:27AM 25                  MR. FEAZEL: Nothing, Your Honor.

1                   THE COURT: Anything else from the Defense?

2                   MR. CASE: No, Your Honor.

3                   THE COURT: The defendant is on bond, \$50,000  
4 unsecured bond.

09:59:34AM 5                   Does the United States have any objection to  
6 him remaining on bond pending designation?

7                   MR. FEAZEL: No, Your Honor.

8                   THE COURT: Mr. Morris, have you had any new law  
9 violations since you have been on bond?

09:59:44AM 10                  THE DEFENDANT: No, Your Honor.

11                  THE COURT: Have you missed any appointments with  
12 your pretrial services officer?

13                  THE DEFENDANT: No, Your Honor.

14                  THE COURT: Are you still working?

09:59:51AM 15                  THE DEFENDANT: Yes, Your Honor.

16                  THE COURT: Okay. All right. Then I will let you  
17 stay on bond until they designate you; that is, until they  
18 tell you where it is that you're supposed to surrender  
19 yourself to. Same conditions of release. Don't make anybody  
10:00:01AM 20 come looking for you.

21                  Do you understand me, sir?

22                  THE DEFENDANT: Yes, Your Honor.

23                  THE COURT: All right. Esthela, please file these  
24 for me, please. These are mine, right, to keep, right?

10:00:10AM 25                  MR. CASE: Yes, Your Honor.

1           THE COURT: Okay. All right. Anything else from  
2 the Defense?

3           MR. CASE: No, Your Honor.

4           THE COURT: All right. Thank you. Then you're  
10:00:13AM 5 excused.

6           (Concluded)

7           \* \* \*

8 I certify that the foregoing is a correct transcript from the  
9 record of proceedings in the above-entitled cause, to the best  
of my ability.

10

11

//s\_\_\_\_\_ CSR, RPR  
Stephanie Kay Carlisle  
Official Court Reporter

08/29/2011  
Date

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